

Statement of W. Frederick Thompson to the Services Acquisition
Reform Act Acquisition Advisory Panel

September 27, 2005

BACKGROUND AND EXPERIENCE

Good morning, my name is Fred Thompson. I am the Vice President for Management and Technology at the Council for Excellence in Government. The Council is a non-profit, non-partisan organization working to improve the performance of government at all levels and to improve government's place in the lives and esteem of American citizens. My role in the Council is to focus on ways to improve government performance in technology, human capital, financial management and acquisition activities. I work with the Council's corporate partners and with government managers to highlight areas that need to be improved and to work on realistic solutions to challenges that face government in these areas.

I have a substantial personal background in technology and services acquisition. In 1981 I became responsible for an agency-wide effort at the U.S. Office of Personnel Management (OPM) to define its future IT requirements and its IT strategy. Over the next few years I worked within the Federal Information Resources Management Regulations and the Federal Procurement Regulations to replace OPM's core computing capability and the systems that supported the Civil Service Retirement System and the Personnel Investigations Processing System. In 1988 I joined the Internal Revenue Service (IRS). I developed and successfully executed an IT procurement strategy for IRS that resulted in the replacement and integration of its corporate processing capabilities and the upgrade and replacement of its Service Center IT complexes. I also led major service acquisitions to create an FFRDC, an integration support capability and an ongoing IT services acquisition vehicle. I oversaw the evaluation of many IRS IT procurements and served on source selection boards at the IRS acquisitions and on an Air Force source selection board. I have also served as the COTR for a \$1.4 billion IT systems and services integration contract.

In 2002 I retired from the Department of the Treasury and, soon after, joined the Unisys Corporation as its Practice Director for eGovernment. In that role I was responsible for leading Unisys bid teams for multi-agency eGovernment opportunities. I also served for approximately one year as the on-site program manager for a multi-million dollar IT support contract that Unisys held. This contract had been awarded as a performance based contract. In May 2005, I joined the Council in my current position.

POST EMPLOYMENT RESTRICTIONS

Because of post employment agreement restrictions, I will not testify with respect to any information about the Unisys Corporation or its practices that is not generally known outside the company. My testimony should not be interpreted to describe any Unisys business practices. My comments reflect my personal judgment and insights gleaned from my broad experience across my entire work career.

THE IDEAL OF PERFORMANCE BASED CONTRACTING

The concept of performance based contracting is very attractive to both government and industry. From a government perspective, it allows industry to innovate and requires only a very brief description of the outcomes to be achieved. Performance based acquisitions should be faster, easier and cheaper to perform than traditional acquisitions with detailed specifications.

This approach is equally attractive to Industry. Being measured on results and having the freedom to adjust practices, processes, technology, staffing and investment over time to achieve those results is attractive to industry. Having the government act with a more commercial-like mindset that allows industry to cut the cost of competing for government contracts and allows more freedom of performance would benefit industry.

For a number of reasons, these goals and this mutual value of performance based contracting is not always achieved. I would

like to address what I believe to be some of the challenges that inhibit the success of performance based contracting and to suggest what I think could be done to make performance based contracting more valuable for both parties and more valuable for the taxpayer.

FULFILLING THE PROMISE OF PERFORMANCE BASED CONTRACTING

To achieve better results through performance based contracting, the government should carefully consider when and where to use it, should use well trained and highly experienced officials to design, award and manage these contracts and should discipline the way that it monitors and measures day-to-day performance. Specifically:

1. Government buyers using performance based contracts need to be well informed and highly knowledgeable about the technologies and commercial business practices of industry. When government issues a performance based contract, it is, in effect, stating that the outcome matters but the process of achieving this outcome can be designed and managed by the contractor. In other words, the normal commercial practice of the contractor is acceptable. By making this assertion, it allows the contractor to substitute its assumptions that define its commercial practice for government detailed specifications that would otherwise scope and define the process for results delivery. Each contractor has the incentive to make assumptions that benefit its proposal and its competitive position. The only check upon this is the government's ability to determine whether or not these assumptions are really reasonable and truly reflect commercial practice. Otherwise, the government runs the risk of awarding to the contractor making the most favorable assumptions vs. the contractor delivering good quality at the truly best price. It is not reasonable to expect that every agency would understand every industry well enough to make good decisions about business practices and proposal assumptions. I would recommend that the government either 1) establish centers

- of excellence for consultation on various technologies and support categories or 2) that only select and highly experienced agencies with deep industry expertise perform such acquisitions across government. Acquisition personnel hired to perform these duties should have worked in the industries or technologies in which they specialize and they should bring deep personal acquisition and subject matter expertise to bear in the buying decision.
2. The government should use performance based contracting with great care when it is the expert in a work process and has a profound interest in the way that work is performed. The implicit assumption behind performance based contracting is that it is the results that matter and that great leeway could be exercised in obtaining the desired results. In many cases, this is reasonable. To use a simplistic example, if the government requires the grass to be cut to a certain height, it is of no consequence to the government whether that work is performed by a hand mower or whether the work is performed by a riding mower. On the other hand, there are commercial practices that differ significantly from government practices. An example would be debt collection. Private 3rd party debt collection is common. In such arrangements the debt collector often owns the debt and has no interest in retaining the debtor as an ongoing client; its only interest is to have the debt repaid. With government debt collection (such as that performed by the IRS), the debtor remains a citizen and a taxpayer and is therefore a continuing “customer” and an ongoing “owner” of the collection agency through virtue of being a citizen with recourse to Congress. The commercial tools, techniques and approaches of a debt collector may well need to be modified substantially if the IRS debt collection function were to be fulfilled by a private debt collection agency through a performance based contract.
 3. The government needs to reduce the ambiguity of its performance based work statements. A number of performance based contracts have been issued with very brief 4 or 5 page statements of objectives and these objectives have then been accompanied with dozens of additional pages of detailed requirements. The message is

highly ambiguous. On the one hand, the commercial provider is being given the opportunity to design a solution. On the other hand, major portions of that design are constrained by highly specific requirements. The evaluation process gives the government the flexibility to treat its “supplementary” technical requirements as the basis for the award. This leaves the contractor in the position of having to take risks in interpreting what the government really wants. These risks and the contractor’s interpretation of them could cause the contractor to over-bid the requirement or could cause it to under-bid the requirement. The impact would either be that the government pays too much to fulfill the requirement or that the contractor is not able to perform adequately at the price the government pays. Neither outcome is desirable.

4. The desired result of a performance based contract needs to be clearly articulated. The most critical aspect of a performance base contract is the definition of the product or result or specific performance level to be obtained through the contractor’s performance. I have seen contracts in which a global statement of support needs suffices as the requirement and a global statement of contractor capabilities and approach suffices as the contractor commitment. The true contract is then defined through the specific task orders issued under this very broad contractual framework. Those task orders, in effect, become a mighty forest of mini-contracts each of which has its own idiosyncratic requirements, terms and conditions. This raises the cost of contract administration to the contractor and to the government and brings into question the basis under which the contract was awarded. If each task order defines the contract, what did the contract define? If the result that the government wishes to obtain cannot be clearly articulated in the proposal, a performance based contract may not work to the benefit of either party.
5. The buyer needs to be the user. The contracting officer advising on award needs to be the contracting officer delivering the result. In one major government-wide contract that I am aware of, an agency official managing an

agency with a few thousand people and having only peripheral interest in the contract was the Source Selection Official for that contract. I do not believe that created the right environment for a reasonable award determination. For there to be adequate accountability in the process, I believe that the people who will have to make the contract work (from the government side that is the CO and the COTR and the Program Manager) need to be intimately involved in the award of the contract and need to be held accountable for the delivery of the result. I feel that the same thing is true on the contract side. The bid manager should be the program manager responsible for the delivery of the contract. When everyone knows that they are accountable for the long term results of the contract and that they cannot hand the contract off to someone else to deliver, there is a much stronger governor on the system. I have seen situations where contracting officers obtain awards for awarding a contract at a low cost where it is unlikely to be successfully delivered. Good performance based contracting should be life-cycle performance based contracting where results are measured and awards for management and delivery are made over the life-cycle of performance not exclusively in the warm glow of a contract award when everyone feels good about the future but no result has been obtained.

6. The COTR of a performance based contract needs to accept a reduced role. The government has not had a lot of experience with performance based contracting. Therefore, many COTRs feel that they can perform their functions as they always have, having close working relationships with contractor staff and identifying performance deficiencies and seeking corrective action whenever the process of performance does not meet their expectations. Often, contracting officers who could influence the actions of a COTR are handling a plethora of government-wide acquisition contracts or are managing a general contracting utility and are too far removed from the action to influence a COTR's actions. The contractor has a disincentive to complain about intrusive COTR actions or instructions because such complaints could cause it to lose business.

Therefore, the contractor makes the ongoing process and delivery changes suggested or directed by the COTR. Taking these actions may inhibit its ability to make a profit in delivering the required performance. A performance based contract assumes relative freedom of delivery approaches after award. When this is not allowed to occur, delivery and value to the government suffer. In part, this challenge can be dealt with through COTR training; in part it can be dealt with by creating closer ongoing working relationships with COs and contractors. However, the bottom line is that if the government wants to manage a contract as a time and materials contract, it should award it as a time and materials contract rather than awarding it as a performance based contract. These are issues that should be discussed at length among the Program Manager, the Contracting Officer and the COTR before a specification is ever released. In my view, the CO, as the owner of the contracting process has the ultimate responsibility to lead and manage this relationship through the life of the contract.

CONCLUSION – PRINCIPLES FOR IMPROVING GOVERNMENT CONTRACTING

I would like to conclude by identifying what I believe to be a few principles for improving government contracting. First of all, I believe that there is a lot of room for improvement. I think that government contracting often sacrifices life-cycle cost and quality of performance for the value of competition.

Competition should be viewed as a means to an end and not as an end in itself. The objective of government contracting should be to achieve the best performance available at a reasonable price. Although competition is generally viewed as the best way to achieve this, government rules, processes, timetables and ambiguity often frustrate market forces that would lead to lower costs. In general, I would offer the following principles:

1. Government should seek to reduce the OVERALL cost of competition. If 4 companies each spend \$1 million to

compete for a government contract, the value to the government from this \$4 million expenditure is zero. It would be far better for the government and for the contractors if the competition were cheaper and faster. The government pays for contractor sales and general and administrative expenses associated with the added expense of federal contracting. Simplifying the process would ultimately reduce costs for the government and its contractors.

2. Reduce the time for competitions. A quick round of bids for an RFI and another limited time but more detailed round for a smaller subset of qualified bidders is one way to do this. This reduces costs for contractors involved and winnows the field of contractors without a reasonable chance of winning. That winnowing is achieved through competition and not merely through contract vehicle selection. One recent procurement that I am aware of identified an 18 month bidding process for a task expected to take 24-36 months to deliver. This is on its face unreasonably costly.
3. Emphasize normal commercial practice. As noted above, one of the virtues of performance based contracting is that it allows industry to provide more commercial solutions and requires less tailoring of solutions to the government. When this is viable, this is the least costly and least risky approach for both parties. However, the government needs to be an informed buyer and a careful buyer and contract manager for this to work. It needs to reduce contractor bid risks by clearly articulating the requirements that it plans to hold the contractor to after award. I believe that the concepts I have articulated in this testimony can help the government achieve this objective

Thank you.